



Senate

General Assembly

File No. 318

February Session, 2016

Substitute Senate Bill No. 292

Senate, March 30, 2016

The Committee on Public Health reported through SEN. GERRATANA of the 6th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING BEHAVIOR ANALYSTS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 20-185i of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective January 1, 2017*):

3 (a) As used in this section, sections 2 to 5, inclusive, of this act and
4 section 19a-14, as amended by this act:

5 (1) "Behavior Analyst Certification Board" means the nonprofit
6 corporation established to meet the professional credentialing needs of
7 behavior analysts, governments and consumers of behavior analysis
8 services and accredited by the National Council for Certifying
9 Agencies in Washington, D.C., or any successor national accreditation
10 organization;

11 [(2) "Board certified behavior analyst (BCBA)" means a person who
12 has been certified as a behavior analyst by the Behavior Analyst
13 Certification Board; and

14 (3) "Board certified assistant behavior analyst (BCABA)"]

15 (2) "Behavior analysis" means the design, implementation and
16 evaluation of environmental modifications, using behavior stimuli and
17 consequences, including the use of direct observation, measurement
18 and functional analysis of the relationship between the environment
19 and behavior, to produce socially significant improvement in human
20 behavior, but does not include: (A) Psychological testing, (B)
21 neuropsychology, (C) cognitive therapy, (D) sex therapy, (E)
22 psychoanalysis, (F) hypnotherapy, (G) cognitive behavioral therapy,
23 (H) psychotherapy, or (I) long-term counseling as treatment
24 modalities;

25 (3) "Behavior analyst" means a person who is licensed to practice
26 behavior analysis under the provisions of section 3 or 4 of this act; and

27 (4) "Assistant behavior analyst" means a person who has been
28 certified as an assistant behavior analyst by the Behavior Analyst
29 Certification Board to assist in the practice of behavior analysis under
30 the supervision of a behavior analyst.

31 (b) No person, unless certified by the Behavior Analyst Certification
32 Board as a [board certified behavior analyst or a] board certified
33 assistant behavior analyst, shall use in connection with his or her name
34 or place of business: (1) The words ["board certified behavior analyst",
35 "certified behavior analyst,] "board certified assistant behavior
36 analyst" or "certified assistant behavior analyst", (2) the letters [,
37 "BCBA" or] "BCABA", or (3) any words, letters, abbreviations or
38 insignia indicating or implying that he or she is a [board certified
39 behavior analyst or] board certified assistant behavior analyst or in any
40 way, orally, in writing, in print or by sign, directly or by implication,
41 represent himself or herself as a [board certified behavior analyst or]
42 board certified assistant behavior analyst. Any person who violates the
43 provisions of this section shall be guilty of a class D felony. For the
44 purposes of this section, each instance of contact or consultation with
45 an individual which is in violation of any provision of this section shall
46 constitute a separate offense.

47 Sec. 2. (NEW) (*Effective January 1, 2017*) (a) No person may practice
48 behavior analysis unless licensed pursuant to section 3 or 4 of this act.

49 (b) No person may use the title "behavior analyst" or make use of
50 any title, words, letters or abbreviations that may reasonably be
51 confused with licensure as a behavior analyst unless such person is
52 licensed pursuant to section 3 or 4 of this act.

53 (c) The provisions of this section shall not apply to a person who (1)
54 provides behavior analysis or assists in the practice of behavior
55 analysis while acting within the scope of practice of the person's
56 license and training, provided the person does not hold himself or
57 herself out to the public as a behavior analyst, (2) is a student enrolled
58 in a behavior analysis educational program accredited by the Behavior
59 Analyst Certification Board, or a graduate education program in which
60 behavior analysis is an integral part of the student's course of study
61 and such student is performing such behavior analysis or assisting in
62 behavior analysis under the direct supervision of a behavior analyst,
63 (3) is an instructor in a course approved by the Behavior Analyst
64 Certification Board, (4) is an assistant behavior analyst working under
65 the supervision of a behavior analyst in accordance with the standards
66 established by the Behavior Analyst Certification Board, (5)
67 implements an intervention based on behavior analysis under the
68 supervision of a behavior analyst, or (6) is a family member, guardian
69 or caretaker implementing a behavior analysis treatment plan under
70 the direction of a behavior analyst.

71 Sec. 3. (NEW) (*Effective January 1, 2017*) (a) The Commissioner of
72 Public Health shall grant a license as a behavior analyst to any
73 applicant who furnishes evidence satisfactory to the commissioner that
74 such applicant is certified as a behavior analyst by the Behavior
75 Analyst Certification Board. The commissioner shall develop and
76 provide application forms. The application fee shall be three hundred
77 fifty dollars.

78 (b) Licenses issued under this section may be renewed biennially.
79 The fee for such renewal shall be one hundred seventy-five dollars.

80 Each behavior analyst applying for license renewal shall furnish
81 evidence satisfactory to the commissioner of having current
82 certification with the Behavior Analyst Certification Board.

83 Sec. 4. (NEW) (*Effective January 1, 2017*) A person, who is not eligible
84 for licensure under section 3 of this act, may apply for licensure by
85 endorsement as a behavior analyst. Such applicant shall present
86 evidence satisfactory to the commissioner that the applicant is licensed
87 or certified as a behavior analyst, or as a person entitled to perform
88 similar services under a different designation, in another state or
89 jurisdiction that has requirements for practicing in such capacity that
90 are substantially similar to, or higher than, those of this state and that
91 there are no disciplinary actions or unresolved complaints pending.

92 Sec. 5. (NEW) (*Effective January 1, 2017*) The Commissioner of Public
93 Health may take any disciplinary action set forth in section 19a-17 of
94 the general statutes against a behavior analyst for any of the following
95 reasons: (1) Failure to conform to the accepted standards of the
96 profession; (2) conviction of a felony; (3) fraud or deceit in obtaining or
97 seeking reinstatement of a license to practice behavior analysis; (4)
98 fraud or deceit in the practice of behavior analysis; (5) negligent,
99 incompetent or wrongful conduct in professional activities; (6)
100 physical, mental or emotional illness or disorder resulting in an
101 inability to conform to the accepted standards of the profession; (7)
102 alcohol or substance abuse; or (8) wilful falsification of entries in any
103 hospital, patient or other record pertaining to behavior analysis. The
104 commissioner may order a license holder to submit to a reasonable
105 physical or mental examination if his or her physical or mental
106 capacity to practice safely is the subject of an investigation. The
107 commissioner may petition the superior court for the judicial district of
108 Hartford to enforce such order or any action taken pursuant to section
109 19a-17 of the general statutes. The commissioner shall give notice and
110 an opportunity to be heard on any contemplated action under section
111 19a-17 of the general statutes.

112 Sec. 6. Subsection (c) of section 19a-14 of the 2016 supplement to the

113 general statutes is repealed and the following is substituted in lieu
114 thereof (*Effective January 1, 2017*):

115 (c) No board shall exist for the following professions that are
116 licensed or otherwise regulated by the Department of Public Health:

117 (1) Speech and language pathologist and audiologist;

118 (2) Hearing instrument specialist;

119 (3) Nursing home administrator;

120 (4) Sanitarian;

121 (5) Subsurface sewage system installer or cleaner;

122 (6) Marital and family therapist;

123 (7) Nurse-midwife;

124 (8) Licensed clinical social worker;

125 (9) Respiratory care practitioner;

126 (10) Asbestos contractor and asbestos consultant;

127 (11) Massage therapist;

128 (12) Registered nurse's aide;

129 (13) Radiographer;

130 (14) Dental hygienist;

131 (15) Dietitian-Nutritionist;

132 (16) Asbestos abatement worker;

133 (17) Asbestos abatement site supervisor;

134 (18) Licensed or certified alcohol and drug counselor;

- 135 (19) Professional counselor;
- 136 (20) Acupuncturist;
- 137 (21) Occupational therapist and occupational therapist assistant;
- 138 (22) Lead abatement contractor, lead consultant contractor, lead
139 consultant, lead abatement supervisor, lead abatement worker,
140 inspector and planner-project designer;
- 141 (23) Emergency medical technician, advanced emergency medical
142 technician, emergency medical responder and emergency medical
143 services instructor;
- 144 (24) Paramedic;
- 145 (25) Athletic trainer;
- 146 (26) Perfusionist;
- 147 (27) Master social worker subject to the provisions of section 20-
148 195v;
- 149 (28) Radiologist assistant, subject to the provisions of section 20-74tt;
- 150 (29) Homeopathic physician;
- 151 (30) Certified water treatment plant operator, certified distribution
152 system operator, certified small water system operator, certified
153 backflow prevention device tester and certified cross connection
154 survey inspector, including certified limited operators, certified
155 conditional operators and certified operators in training;
- 156 (31) Tattoo technician; [and]
- 157 (32) Genetic counselor; and
- 158 (33) Behavior analyst.
- 159 The department shall assume all powers and duties normally vested

160 with a board in administering regulatory jurisdiction over such
 161 professions. The uniform provisions of this chapter and chapters 368v,
 162 369 to 381a, inclusive, [383] 382a to 388, inclusive, 393a, 395, 398, 399,
 163 400a and 400c, including, but not limited to, standards for entry and
 164 renewal; grounds for professional discipline; receiving and processing
 165 complaints; and disciplinary sanctions, shall apply, except as otherwise
 166 provided by law, to the professions listed in this subsection.

167 Sec. 7. Subdivision (6) of section 20-413 of the general statutes is
 168 repealed and the following is substituted in lieu thereof (*Effective*
 169 *January 1, 2017*):

170 (6) The provision of applied behavior analysis services by a [board
 171 certified] behavior analyst or a [board certified] assistant behavior
 172 analyst, as such terms are defined in section 20-185i, as amended by
 173 this act, in accordance with section 10-76ii.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>January 1, 2017</i>	20-185i
Sec. 2	<i>January 1, 2017</i>	New section
Sec. 3	<i>January 1, 2017</i>	New section
Sec. 4	<i>January 1, 2017</i>	New section
Sec. 5	<i>January 1, 2017</i>	New section
Sec. 6	<i>January 1, 2017</i>	19a-14(c)
Sec. 7	<i>January 1, 2017</i>	20-413(6)

Statement of Legislative Commissioners:

Section 7 was added to make conforming changes to Section 20-413 of the general statutes for statutory consistency.

PH *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 17 \$	FY 18 \$
Public Health, Dept.	GF - Cost	26,000	23,000
Resources of the General Fund	GF - Revenue Gain	138,250	63,000
NET IMPACT	GF - Revenue Gain	112,250	40,000

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill results in a net state revenue gain of \$112,250 in FY 17 and \$40,000 in FY 18 from the establishment of a new “Behavior Analyst” (BA) licensure category within the Department of Public Health (DPH).

The approximate \$26,000 cost to DPH in FY 17 reflects expenditures for a processing technician contractor (\$24,000), equipment (computer, software, and scanner - \$1,700), and associated other expenses (printing, postage, and office supplies - \$400). General Fund (GF) revenue of approximately \$138,250 is also anticipated that fiscal year from initial licensure application fees at \$350 per application. Detail on the assumptions that underpin these cost and revenue estimates is provided in the “Assumptions” section below.

ASSUMPTIONS

There are 495 board certified BAs in Connecticut, based on a search of the Behavior Analyst Certification Board®, Inc. website. In FY 17, beginning on 1/1/2017, it is assumed that 80% of these will seek licensure (395). The following fiscal year, it is anticipated that the remaining 100 individuals will apply for licensure, along with an

additional 80 new applicants. A processing technician contractor cost of approximately \$30 an hour, and a complaint investigation contractor cost of \$100 per hour, is used for the purposes of this fiscal note. It is assumed that initial licensure will require an average of 2 hours to process, and renewals will require one hour, on average.

Complaints are not anticipated in the first fiscal year of partial implementation of the new licensure category. Using Marriage and Family Therapists (MFT) as proxy, between 1983 and 2015, less than one MFT incurred a disciplinary action each year. Using this average for the BA population, roughly three BAs will incur a disciplinary action annually. It is assumed that there are three complaints for every one disciplinary action incurred, for a total of six complaint investigations. A contractor cost of \$10,800 in FY 18 is based on 18 hours, on an average, for complaint investigation and resolution.

The Out Years

State Impact:

Agency Affected	Fund-Effect	FY 19 \$	FY 20 \$	FY 21 \$
Public Health, Dept.	GF - Cost	28,000	21,000	18,000
Resources of the General Fund	GF - Revenue Gain	97,125	59,500	42,000

Note: GF=General Fund

Municipal Impact: None

The annualized ongoing fiscal impact identified above would continue into the future subject to the number of initial and renewal BA licenses issued by the agency, associated costs (a 2% cost inflation is anticipated), and revenue from fees. In the out years, approximately 80 individuals are anticipated to seek BA licensure. This would result in a GF revenue gain of \$28,000 annually from fees for initial licenses. As licenses are valid for two years, renewals would not be necessary for individuals that are licensed in FY 17 until FY 19. The fee for renewal licensure is \$175 under the bill.

Sources: Behavior Analyst Certification Board®, Inc.
website: <http://info.bacb.com/o.php?page=100155>

OLR Bill Analysis**sSB 292*****AN ACT CONCERNING BEHAVIOR ANALYSTS.*****SUMMARY:**

This bill requires behavior analysts to be licensed by the Department of Public Health (DPH). To obtain a license, an applicant must be (1) certified by the Behavior Analyst Certification Board (“board”) or (2) eligible for licensure by endorsement. Current law prohibits representing oneself as a “board certified behavior analyst” unless certified by the board.

Among other exemptions, the bill’s licensure requirement does not apply to (1) individuals providing behavior analysis while acting within the scope of their licenses and training, as long as they do not hold themselves out as behavior analysts, or (2) assistant behavior analysts working under a licensed analyst’s supervision.

The bill sets the grounds for DPH disciplinary action against licensees and specifies that no new regulatory board is created for behavior analysts.

It specifies that assistant behavior analysts must work under a licensed behavior analyst’s supervision (by law, assistant analysts must be board certified).

The bill also makes technical and conforming changes.

EFFECTIVE DATE: January 1, 2017

BEHAVIOR ANALYST LICENSURE**§ 1 — Behavior Analysis Definition**

Under the bill, “behavior analysis” is the design, implementation, and evaluation of environmental modifications, using behavior stimuli

and consequences, including direct observation, measurement, and functional analysis of the relationship between the environment and behavior, to produce socially significant improvement in human behavior. The term does not include psychological testing, neuropsychology, cognitive therapy, sex therapy, psychoanalysis, hypnotherapy, cognitive behavioral therapy, psychotherapy, or long-term counseling.

§ 2 — *Licensure Requirement and Exemptions*

Under current law, it is a class D felony for someone not board-certified to represent himself or herself as a board certified behavior analyst. The bill instead generally prohibits anyone without a behavior analyst license from (1) practicing behavior analysis or (2) using the title “behavior analyst” or any title, words, letters, or abbreviations that may reasonably be confused with behavior analyst licensure.

These restrictions do not apply to:

1. individuals who provide behavior analysis or assist in the practice of behavior analysis while acting within the scope of practice of their license and training, as long as they do not hold themselves out to the public as behavior analysts;
2. students enrolled in a board-accredited behavior analysis educational program or a graduate education program in which behavior analysis is an integral part of the course of study, if performing behavior analysis or assisting in such analysis under a licensed behavior analyst’s direct supervision;
3. instructors in board-approved courses;
4. assistant behavior analysts working under a licensed behavior analyst’s supervision in accordance with standards established by the board;
5. individuals implementing an intervention based on behavior analysis under a licensee’s supervision; or

6. family members, guardians, or caretakers implementing a behavior analysis treatment plan under a licensee's direction.

Under existing law, unchanged by the bill, the education commissioner may authorize certain unlicensed or uncertified individuals to provide behavior analysis services under a board-certified behavior analyst's supervision (see BACKGROUND). It is unclear how this provision and the bill interact.

§§ 3 & 4 — License Applications, Qualifications, and Renewals

The bill requires the DPH commissioner to issue a behavior analyst license to any applicant who submits, on a DPH form, satisfactory evidence that he or she is board certified as a behavior analyst.

The bill also allows for licensure by endorsement for individuals who are not board certified. Such an applicant must provide satisfactory evidence that he or she is licensed or certified as a behavior analyst (or as someone entitled to perform similar services under a different title) in another state or jurisdiction. That jurisdiction's requirements for practicing must be substantially similar to or greater than those in Connecticut, and there must be no pending disciplinary actions or unresolved complaints against the applicant.

The license application fee is \$350. Licenses must be renewed every two years for \$175. To renew, licensees must provide satisfactory evidence that they are board certified. (Thus, individuals licensed by endorsement must become board certified if they seek to renew their license.)

§ 5 — Enforcement and Disciplinary Action

The bill allows the DPH commissioner to take disciplinary action against a licensed behavior analyst for:

1. failing to conform to the accepted standards of the profession;
2. a felony conviction;
3. fraud or deceit in obtaining or seeking reinstatement of a license

- or in the practice of behavior analysis;
4. negligence, incompetence, or wrongful conduct in professional activities;
 5. an inability to conform to professional standards because of a physical, mental, or emotional illness;
 6. alcohol or substance abuse; or
 7. willfully falsifying entries in any hospital, patient, or other behavior analysis record.

By law, disciplinary actions available to DPH include (1) revoking or suspending a license, (2) censuring the violator, (3) issuing a letter of reprimand, (4) placing the violator on probation, or (5) imposing a civil penalty of up to \$25,000 (CGS § 19a-17). Under the bill, the commissioner may also order a licensee to undergo a reasonable physical or mental examination if his or her physical or mental capacity to practice safely is under investigation.

The bill allows the commissioner to petition Hartford Superior Court to enforce such an examination order or any disciplinary action he takes. He must give the person notice and an opportunity to be heard before taking disciplinary action.

BACKGROUND

Board Certified Behavior Analysts' Services for Students with Autism Spectrum Disorder

By law, school districts must provide applied behavior analysis for students with autism spectrum disorder who require the services (1) according to a special education individualized education program or (2) under an educational plan established under section 504 of the federal Rehabilitation Act of 1973. To provide these services, a person generally must either be (1) licensed by DPH or certified by the State Department of Education and the services must be within the scope of the license or certificate or (2) board certified as a behavior analyst or assistant behavior analyst.

If the education commissioner determines that there are not enough certified or licensed individuals to provide the required services, the law allows her to authorize people with the following qualifications to provide them, under the supervision of a board-certified behavior analyst:

1. a bachelor's degree in a related field and
2. at least (a) nine credit hours of course work in a board-approved course sequence or (b) course work meeting the requirements to sit for the behavior analyst certification exam (CGS § 10-76ii).

COMMITTEE ACTION

Public Health Committee

Joint Favorable Substitute

Yea 27 Nay 0 (03/16/2016)